

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 781 of 2000

in

SPECIAL CIVIL APPLICATION No 2497 of 1990

With

Civil Application No.6613 of 2000

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

and

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

HASMUKHLAL N. BHATT

Versus

STATE OF GUJARAT

Appearance:

MR JITENDRA M PATEL for Appellant

MR PANCHOLI, AGP for Respondent No. 1, 2, 3

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

and

MR.JUSTICE P.B.MAJMUDAR

Date of decision: 03/04/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE P.B.MAJMUDAR)

#. This appeal is directed against the order of the learned Single Judge dated 4.4.2000 passed in Special Civil Application No.2497 of 1990 by which the learned Single Judge has dismissed the petition and vacated the interim relief granted earlier by the court.

#. The facts leading to these proceedings are as under.:

#. The appellant - original petitioner was serving on the post of Store Keeper under Food and Drugs Laboratory, Vadodara. At the relevant time, two imported machines i.e. (1) Single Beam Spectro Photo Meter, and (ii) High Pressure Liquid Cometography Apparatus were imported from U.S.A. and Denmark. The said machines were to be used at Baroda Laboratory which is under the respondent No.3. The Department received the information that the aforesaid two machines have arrived at Bombay and Cargo Arrival notices dated 7.8.1985 and 8.8.1985 were received by the Department. After receipt of the Cargo Arrival notices, the respondent No.3 addressed the letters dated 12.8.1985 and 14.8.1985 to the Manager, State Bank of India at Vadodara stating that, they have received Cargo Arrival notices and the Bank was requested to give delivery orders, so that, delivery can be obtained. After following the said procedure and after making necessary inquiry by the Department, the said equipments were sent from Bombay to Vadodara on 3.10.1985 and actual delivery was taken by the Baroda office on 17.12.1985 and because of the delay in taking the delivery, the Department had to pay demurrage charges of Rs.7705/- for Single Beam Spectro Photo Meter and Rs.3720/- for High Pressure Liquid Cometography Apparatus. The aforesaid demurrage charges were paid by the Department and subsequently there was an audit objection by the Audit Department in which it was suggested to fix the responsibility on the concerned person for not taking the delivery of the goods in time. In pursuance of the said audit query, two notices were issued by the Commissioner to the appellant - petitioner as to why the aforesaid amount should not be recovered from his salary as because of delay on his part to take the delivery, the Department has to pay the aforesaid amount of demurrage. The show cause notice dated 3.9.1987 is produced at page 43. It is stated in the said show cause notice that, since the delivery was not taken for 16 weeks, the aforesaid amount of demurrage was required to be paid for each of the

machine. As stated earlier, two separate show cause notices were issued. Both are dated 3.9.1987. The appellant - petitioner, thereafter, gave his reply on 8.3.1988. The said reply was in great detail wherein reference to certain documents was also made. It was pointed by the appellant - petitioner that, it was not his sole responsibility and he was working as per the directions given by the respondent No.3. He also further pointed out that, procedure of import is complicated one and it depends upon change in import policy from time to time, and therefore, such type of delay is inevitable and usually delay occurred in many cases. He pointed out that, he should not be made personally liable for the aforesaid payment of demurrage and that he was not negligent at all for taking late delivery of the goods in question. Thereafter, by order dated 26.7.1988 the Joint Commissioner, Vadodara passed the order for recovery of Rs.11576/- from the appellant - petitioner's salary as it was found that the appellant - petitioner is responsible for the late acceptance of the goods in question, and therefore, the amount of demurrage which was paid by the Department was sought to be recovered from his salary. The said order is produced at page 59 alongwith the petition. By subsequent order dated 23.5.1989 it was decided to recover the said amount by way of installment of Rs.500/- each from the salary of the appellant-petitioner. Accordingly, the said amount was to be recovered in 23 monthly installment by recovering Rs.500/- each from every month from the salary of the appellant-petitioner. The appellant-petitioner, thereafter, wrote another letter dated 20.6.1989 to the Commissioner at Gandhinagar which was in form of the representation. He pointed out that, it was not his responsibility alone, but ultimately, he was to work under the instructions of the respondent No.3. It was requested by him that, the said letter may be considered as an appeal or review and further deduction from his salary may be stopped. He pointed out in his letter that, it is the Head of the Department who can be held responsible for the same. There is nothing on record to show as to what had happened to the said representation. Thereafter, the appellant - petitioner filed the aforesaid Special Civil Application which was admitted and interim relief was granted. At the time of hearing of the main Special Civil Application, the learned Single Judge observed that the learned counsel for the appellant - petitioner is not present and considering the impugned order, the learned Single Judge came to the conclusion that, there was no substance in the petition and that ultimately the learned Single Judge dismissed the said petition and vacated the interim relief. Being aggrieved

by the order of the learned Single Judge, the appellant original petitioner has filed this Letters Patent Appeal.

#. Today, the matter has reached for final hearing. We have gone through the petition with its annexures. We have heard the learned AGP Mr.Pancholi for the State. We have also considered the affidavit-in-reply to the Letters Patent Appeal filed by the Government.

#. So far as the recovery of the amount from the salary of the Government servant is concerned, the same is treated as minor penalty and the procedure for the same is prescribed under Rule 11 of the Gujarat Civil Services (Discipline & Appeal) Rules, 1971. The said rule reads as under.:

"11. Procedure for imposing minor penalties.- (1)

Subject to the provisions of sub-rule (3) of rule 10, no order imposing on a Government servant any of the penalties specified in items (1) to (3) of rule 6 shall be passed except after -

- (a) informing the Government servant in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour or of any culpable act or omission, on which it is proposed to be taken, and giving him a reasonable opportunity of making such representations as he may wish to make against the proposal.
- (b) holding an inquiry in the manner laid down in sub-rule (3) to (22) of rule 9, in every case in which the Disciplinary Authority is of the opinion that such inquiry is necessary.
- (c) taking the representation, if any, submitted by the Government servant under clause (a) and the record of inquiry, if any, held under clause (b) into consideration.
- (d) recording a finding on each imputation of misconduct or misbehaviour or of any culpable act or omission, and
- (e) consulting the Commission where such consultation is necessary.

(2) The record of the proceedings in such cases shall include-

- (i) a copy of the intimation to the Government servant of the proposal to take action against him.
- (ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him.
- (iii) his representation if any,
- (iv) the evidence produced during the inquiry,
- (v) the advice of the Commission, if any,
- (vi) the finding on each imputation of misconduct or misbehaviour, or of any culpable act or omission, and
- (vii) the order on the case together with the reasons therefor."

It is required to be noted that, on the basis of the show cause notices received by the appellant - petitioner, he gave detailed reply in which he has also made reference to certain documents. As stated earlier, the aforesaid reply is at page 47 of the petition. He pointed out that, he was not negligent at all. He pointed out that, looking to the documentary evidence, it cannot be said that, he was negligent in his duty and that he has acted as per the directions of the Head of the Department, i.e. respondent No.3. The appellant - petitioner also pointed out that, no particulars about the negligence are stated in the show cause notices. Subsequently, impugned order was passed by which it was decided to recover the aforesaid amount from the salary of the present appellant. It is required to be noted that, reading the impugned order at page 59, it can be said that, it is of cryptic nature. Even, the reply and the defence taken by the appellant - petitioner is not incorporated in the impugned order. No reference is made regarding the averments made by the appellant-petitioner in his reply in any manner except stating that the appellant-petitioner is responsible. Nothing further is stated in the impugned order, and therefore, it is clear that, explanation given by the present appellant has not

been taken into consideration at all in the impugned order. In case of minor penalty also, the Disciplinary Authority is required to give reasoned order as minor penalty is also in the nature of penalty, and therefore, such order is required to be supported by proper reasons.

#. Clause (c) of Rule 11 clearly provides that, before taking final action, representation, if any, submitted by the Government servant under clause (a) and the record of inquiry, if any, held under clause (b) is required to be taken into consideration and under clause (d) recording a finding on each imputation of misconduct or misbehaviour or of any culpable act or omission, is also required to be taken into consideration. Sub-clause (2) also provides that the record of the proceedings in such cases shall include (i) a copy of the intimation to the Government servant of the proposal to take action against him., (ii) a copy of the statement of imputations of misconduct or misbehaviour delivered to him, (iii) his representation if any, (iv) the evidence produced during the inquiry, (v) the advice of the Commission, if any, (vi) the finding on each imputation of misconduct or misbehaviour, or of any culpable act or omission, and (vii) the order on the case together with the reasons therefor.

#. Looking to the impugned order, it cannot be said that the aforesaid requirement of Rule 11 is followed by the Department and the impugned order on the face of it is absolutely cryptic and not supported by reasons. Under these circumstances, we are of the opinion that, the authority has not followed the provisions of Rule 11 of the Gujarat Civil Services (Discipline & Appeal) Rules, 1971. Even the explanation of the appellant - original petitioner is not finding the place in the impugned order, and therefore, without considering the explanation or any of the documents or documentary evidence on record, in cryptic manner the impugned order is passed.

#. Under these circumstances, we are of the opinion that the impugned order is passed without following the procedure prescribed under the aforesaid Rule 11. The impugned order, therefore, deserves to be struck down on the aforesaid ground.

#. Mr.Pancholi, learned AGP, further submitted that the Department has already recovered Rs.5000/- from the salary of the appellant - petitioner and only at that stage, he has preferred the special civil application. However, in view of what is stated above, we are of the opinion that the impugned order is bad in law as it is

passed in violation of Rule 11. The Department, therefore, is not entitled to recover any further amount from the appellant - petitioner on the basis of the impugned order.

##. The appeal is, therefore, deserves to be allowed and is accordingly allowed. The impugned order by which it was decided to recover Rs.11576/- from the salary of the appellant - petitioner by way of monthly installment of Rs.500/- is quashed and set aside. Special Civil Application No.2497 of 1990 filed by the appellant petitioner stands allowed. There shall be no order as to costs.

##. In view of the aforesaid order, no order in Civil Application No.6613 of 2000.

(D.M.Dharmadhikari,CJ)

(P.B.Majmudar,J)
(pathan)